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SUBJECT: NICARAGUA SECTION 527 WAIVER OBSERVATIONS

REFS: A) 08 MANAGUA 1546, B) 08 MANAGUA 354, C) 02 MANAGUA 877, D) MANAGUA 160, E) (C) 08 MANAGUA 1084, F) MANAGUA 659, H) 08 MANAGUA 002, I) MANAGUA 313, J) MANAGUA 244, K) 08 MANAGUA 1120, L) MANAGUA 602, M) 08 MANAGUA 830, N) 08 MANAGUA 724, O) 08 MANAGUA 564, P) MANAGUA 344, Q) MANAGUA 235, R) MANAGUA 465, S) 08 MANAGUA 542

[1](#)1. (U) This cable contains an action request in Paragraph 23.

SUMMARY

[1](#)2. (SBU) Post recommends that the Secretary issue an annual waiver to Section 527 of the Foreign Relations Authorization Act of 1994/1995 for the Government of Nicaragua (GON). Between August 1, 2008, and June 30, 2009, the GON resolved 43 Embassy-registered claims for 31 U.S. citizens, including 12 claims previously dismissed under Decrees 3 (1979) and 38 (1979). While this number is well below the historical average, it does slightly exceed last year's total of resolved claims.

[1](#)3. (SBU) Genuine cooperation on advancing U.S. claims remains somewhat limited as some GON policies inhibit our efforts on case resolution. Nonetheless, Nicaragua achieved the resolution of U.S. citizen claims according to all three benchmarks. GON cooperation with the Embassy improved after the December 2008 bilateral review of the government's property claims resolution process. Indeed, the establishment of the Liaison Office for U.S. Claims has increased communication between the Embassy Property Office and the GON. In addition, GON officials are reviewing final settlement offers that some claimants consider inadequate. We believe that granting a waiver to Nicaragua will keep the GON engaged in working with us to resolve U.S. citizen claims. It will also allow us to continue our strategy of engagement with Nicaragua on issues important to us, including trade and investment under CAFTA-DR, our economic and social development assistance programs aimed at improving the lives of the Nicaraguan people, productive relations with professional military and police forces, and progress on the war on drugs and combating terrorism.

[1](#)4. (SBU) In addition to sending a letter to the Foreign Minister announcing this year's waiver decision and establishing benchmarks for the following year, we propose a formal mid-year review of the GON's progress during the 2009-2010 waiver year. This review could include a visit by Department officials to maintain direct pressure on the GON to resolve U.S. citizen claims and convey USG interest in this topic. We suggest that a senior WHA official communicate the results of the mid-year review in writing [See action request in Paragraph 23].

2008-2009 WAIVER YEAR BENCHMARKS

15. (SBU) In her July 29, 2008 letter to Foreign Minister Santos, then-Secretary of State Condoleezza Rice enumerated three benchmarks for granting a waiver in 2008: 1) successful resolution of a substantial number of Embassy-registered claims; 2) resolution of property claims controlled by the Nicaraguan government, including the "Corporacion Nacional del Sector Publico," (CORNAP, the government's asset holding company); and 3) resolution of property claims against the Nicaraguan Army. The former Secretary also called for a bilateral review of the processes and procedures by which the GON had dismissed many claims under Decrees 3 and 38 or for administrative reasons, such as a lack of proof of ownership and/or property that had been confiscated.

BILATERAL REVIEW SETS TONE FOR COOPERATION

16. (SBU) In December 2008, a U.S. Government (USG) delegation visited Managua to conduct a bilateral review of the GON's property claims resolution process (Ref A). USG officials discussed several issues that limited progress on case resolution. One topic was the dismissal of U.S. citizen claims without fair and transparent due process. The delegation also addressed complaints that the GON failed to calculate settlement offers in a transparent manner. In response, Estrada agreed to update the Attorney General Office's website with information about the claims resolution process.

17. (SBU) The delegation expressed concern that the GON had not resolved claims under the Army's control. They addressed concerns that the Attorney General was siding against U.S. claimants in some court cases. In response, the Attorney General agreed to create two separate commissions, one to review claims under government control, including the Army, and another to review claims that languish in the courts. Finally, USG officials sought to improve the communication between the Embassy Property Office and GON to resolve claims. Attorney General Estrada responded by establishing a liaison office to handle U.S. claims.

GON RESOLVES 43 U.S. CITIZEN CLAIMS

18. (U) The GON achieved some progress toward the first benchmark. Between July 29, 2008, and June 30, 2009, the GON resolved 43 U.S. citizen claims belonging to 31 U.S. citizens registered with the Embassy. One U.S. citizen claimant also withdrew a claim registered with the Embassy because he concluded that he could not provide sufficient documentation to support it. Twelve of the 43 claims resolved by the GON had been previously dismissed under Decrees 3 and 38 (Ref B). As of June 30, 2009, 278 U.S. citizens await the resolution of 582 Embassy-registered claims.

19. (U) On the second benchmark, the GON resolved two U.S. citizen claims under the control of the Nicaraguan National Police (NNP). One claimant received bonds as compensation while the other agreed to lease his property in Jalapa to the NNP. On the third benchmark, the GON resolved one claim under the control of the Army. In February, the municipal court in Masaya evicted a former Army officer from property owned by a U.S. citizen (Ref B).

PROPERTY INDEMNIFICATION BONDS (BPIs)

110. (SBU) The GON typically compensates U.S. citizens for confiscated or expropriated property with low-interest, long-term property indemnification bonds (BPIs). Between July 29, 2008, and June 30, 2009, the GON compensated 40 U.S. citizen claims belonging to 28 U.S. citizens via BPIs issued with a face value of 144,051,300 cordobas, approximately \$7,077,575. A thin secondary market exists for the sale of these bonds, the current price for which ranges between 37 and 53 cents on the dollar. During this waiver year, the GON returned property to a U.S. claimant and also conducted a land swap for another property of comparable value.

SELECTED CASE HIGHLIGHTS

¶11. (SBU) Post continues to encourage the GON to settle claims during the remainder of July 2009. A few high profile cases are close to resolution, such as the claims of U.S. citizens Juan Barreto and Domingo Calero. Mr. Barreto has 28 claims filed with the Embassy for property under the control of the Army (Ref C). Mr. Calero has four claims that have received significant U.S. congressional attention (Ref D). Cases listed below represent a sample of resolutions achieved between July 29, 2008, and June 30, 2009. Their full documentation confirms eligibility for Section 527 waiver consideration for the period July 29, 2008, to July 28, 2009.

All dollar figures have been calculated using the official exchange rate at the time of compensation.

A) Senfeld, Norman: Claimant received bonds with a face value of \$5 million to settle three claims (Ref E). He received \$2.5 million in bonds in September 2008. He should receive the balance in September.

B) Perez-Rios, Roberto: Claimant received BPIs with a face value of \$6845.59 for a 500 square foot lot in Masaya that was under the control of the police.

C) Alvarez, Maria: Claimant regained possession of her property after the municipal court in Masaya evicted a former Nicaraguan Army officer who had control of it. She was a U.S. citizen at the time of confiscation.

D) Hidalgo, Elmer: Claimant signed a lease with the NNP in Jalapa. The police agreed to pay Mr. Hidalgo monthly rent of \$100. The lease is for one year and can be extended for an additional six months.

E) Conrado, Inesyvonne: Claimant received a land swap from the GON. Her coffee plantation in Matagalpa had been confiscated in 1979 and sold to a third party.

PROBLEMS REMAIN DESPITE PROGRESS

¶12. (SBU) Despite Nicaragua's progress in resolving claims according to all three Section 527 benchmarks, and improved communication between the Embassy and GON, a number of government policies complicated the resolution of U.S. citizen claims during the waiver year. These policies, if left unchanged, will likely continue to inhibit our efforts to work with the GON on case resolution. The establishment of the Liaison Office for U.S. Claims in December 2008 has improved communication between the GON, the Embassy, and U.S. claimants on casework. GON officials are also reviewing final settlement offers that some claimants consider as inadequate compensation. However, genuine cooperation on advancing U.S. claims remains limited. The GON continues to assert its goal of resolving all claims by 2011 (Refs F, G). We have reminded GON officials that the U.S. Government considers claims resolved only when claimants believe that they have received adequate and effective compensation.

DISMISSED CLAIMS REMAIN PROBLEMATIC

¶13. (SBU) As of June 30, 2009, Attorney General Estrada had dismissed 134 Embassy-registered claims, including 48 for administrative reasons and 86 based on Decrees 3 and 38. During his March 12 meeting with Estrada, the Ambassador persuaded him to review 70 U.S. citizen claims previously dismissed to determine whether they could be resolved favorably (Ref H). During a June 12 interview on a Nicaraguan television talk show program, however, Estrada claimed that there are over 190 U.S. claims on the Section 527 waiver list that are subject to Decrees 3 and 38 (Ref I). In addition, the National Confiscations Review Commission (CNRC), which is responsible for determining if property claims against the government are legitimate for compensation, attempted to nullify two previously resolved U.S. citizen claims (J). Attorney General Estrada reversed the CNRC's nullifications and pledged to respect all previously resolved claims.

LIMITED PROGRESS ON ARMY-CONTROLLED PROPERTY

¶14. (SBU) The GON has made only very limited progress resolving claims under the control of the Army. While a lower court ruled in February that a former Army officer return a house to a U.S. claimant, the Army and the Army Social Security Institute (IPSM) still control 36 properties claimed by U.S. citizens. High-ranking military officers continue to occupy some of these residences. After the bilateral review in December 2008, Attorney General Estrada created an interagency committee to work on claims for property under control of the government, including the Army, and in particular the 28 claims of U.S. citizen Juan Barreto. However, this committee has not resolved any claims under the control of the Army. On July 1, Estrada told the Ambassador that the Barreto case would unlikely be resolved this waiver year.

CLAIMS IN COURT

¶15. (SBU) Under Nicaraguan law (Law 278/1997), the Attorney General is required to pursue the return of property that was not confiscated under statutes 85/1990 and 86/1990, also known as the "pinata" laws. In August 2008, Attorney General Estrada announced that his office would no longer provide that support (Ref K). In fact, on three occasions, the Attorney General's Office withdrew a petition filed with a local court in support of a U.S. claimant and instead filed a petition on behalf of the illegal occupants.

RESOLUTION OF CLAIMS THROUGH OFFICIAL PUBLICATION

¶16. (SBU) In July 2008, the GON began to regard as resolved cases for which it had published notice of compensation in the Official Gazette and deposited BPIS in escrow (Refs L,M, N). A total of 25 U.S. citizens, including one claimant whose case was being decided in the court system, have been affected by this measure (Ref O). GON officials argue that these claimants had exhausted recourse through the administrative process and should file their cases with local courts if they disagree with the compensation offered. On May 22, the Ambassador told Attorney General Estrada that the USG does not consider these cases resolved (Ref P).

PROPERTY RIGHTS UNDER ATTACK

¶17. (SBU) Landowners report that GON officials and local politicians are systematically infringing on and rescinding the property rights of foreign and local investors. Weak enforcement of property rights and protracted court cases increasingly worry U.S. property owners and frighten potential investors. Since the beginning of 2009, more than a dozen U.S. citizens have sought Embassy assistance to deal with insidious legal and extra-legal disputes (Ref Q). Some U.S. landowners allege that the GON directly seeks to confiscate their property (Refs R, S). Attorney General Estrada has denied that the GON seeks to confiscate property, and he has taken steps to investigate these allegations.

SECTION 527

¶18. (SBU) Section 527 of the Foreign Relations Authorization Act of 1994/1995 prohibits U.S. economic assistance or support in international financial institutions to any government which has not provided U.S. citizens adequate and effective compensation for confiscated property. In the case of Nicaragua, the prohibition would likely affect government-to-government assistance related to military training and equipment, drug interdiction, and electoral and judicial reform, economic development, CAFTA-DR implementation, as well as our votes at the International Monetary Fund, the World Bank, and the Inter-American Development Bank. Section 527 authorizes the Secretary of State, as delegated by the President, to waive this prohibition on an annual basis provided that it is in the U.S. national interest.

¶19. (SBU) Section 527 was amended on December 8, 2004, to base the waiver decision on claims registered with the Embassy before August 1, 2005. No new claims can be considered in determining waiver eligibility. The Embassy maintains a separate database listing 22 property claims that 16 U.S. citizens that were registered after

August 1, 2005. [Note: According to Nicaraguan law and as announced by the GON in 1998, claimants of any nationality had to have filed new claims before December 23, 2000, to be considered for compensation. End note.]

WAIVER RECOMMENDATION

¶20. (SBU) The primary consideration in deciding to issue a waiver each year is whether a waiver would be in the U.S. national interest. In the case of Nicaragua, an important factor in this regard is that we have been able to maintain working relations with the GON across a spectrum of areas important to us, including trade and investment under CAFTA-DR, our economic and social development assistance programs aimed at improving the lives of the Nicaraguan people, productive relations with professional military and police forces, and progress on the war on drugs and combating terrorism. Should Section 527 prohibitions come into effect, our ongoing strategy of U.S. engagement in Nicaragua would be severely compromised.

¶21. (SBU) Another important factor is the effort put forth by the GON to resolve outstanding claims. While the number of claims resolved this year (43) does not meet expectations, the GON has slightly exceeded last year's performance. Furthermore, Attorney General Estrada's establishment of a Liaison Office for U.S. Claims improved cooperation during the latter half of the waiver year. We believe that granting a waiver to Nicaragua will keep the GON engaged in working with us to resolve U.S. citizen claims.

SUGGESTED POINTS FOR THE 2009-10 WAIVER LETTER

¶22. (SBU) We recommend maintaining the three benchmarks previously established. They are as follows: 1) successful resolution of a substantial number of Embassy-registered claims, with particular attention to longstanding, complex cases; 2) resolution of property claims held or controlled by the GON, including CORNAP, government ministries, and the police; and 3) resolution of property claims controlled by the Army. As ancillary points in the letter's narrative portion, we suggest that the Secretary encourage the GON to reinstate claims arbitrarily dismissed, urge the GON to avoid undermining the property rights of U.S. citizens who have filed court cases for the return of their property, and reiterate our position that the USG does not recognize any government effort to resolve claims without U.S. citizen approval of the compensation.

WASHINGTON ENGAGEMENT REQUESTED

¶23. (SBU) Action Request: Post recommends, as in years past, that we conduct a formal mid-year review of the GON's progress on meeting the benchmarks that the Secretary establishes. Should there be a significant lack of progress on resolving claims during the first half of the waiver year, this review could include a visit by Department officials to maintain direct pressure on the GON to resolve U.S. citizen claims and convey USG interest in this topic. We suggest that a senior WHA official communicate the results of the mid-year review in writing to the Foreign Minister and Attorney General.

CALLAHAN